Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	

To: The Federal-State Joint Board

COMMENTS OF RURAL CELLULAR ASSOCIATION AND THE ALLIANCE OF RURAL CMRS CARRIERS

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TABLE OF CONTENTS

Summary

Rural Cellular Association and the Alliance of Rural CMRS Carriers ("RCA-ARC") supports the Joint Board's efforts to determine how best to calculate support and allocate it among competitive and incumbent eligible telecommunications carriers ("ETCs"). As RCA-ARC has emphasized in previous comments, the Joint Board and the Commission have properly declined the invitation by incumbent local exchange carriers ("ILECs") to target competitive ETCs ("CETCs") without addressing broader concerns about support paid to rural ILECs. It has been eight years since Congress declared that all telecommunications markets should be opened to competition, and seven years since the Commission announced its intent to move rural wireline companies to forward-looking costs. Rural consumers have benefited from the efficient investment that competitive per-line support provides, and they will benefit even more when rural ILECs are given similar incentives.

While the proposals put forth by the Joint Board contain important differences in the role played by the states, RCA-ARC believes proper emphasis should be placed on the underlying issue of whether the respective methodologies by which competitive and incumbent ETCs currently receive support should be retained. Regardless of how much allocation authority is transferred to states, RCA-ARC strongly urges the Joint Board and the FCC to ensure that competitive ETCs continue to receive support based on the per-line support received by the incumbent in the area. RCA-ARC likewise urges the Joint Board and the Commission to put in place a system to transition rural ILECs to a payment methodology based on forward-looking costs.

RCA-ARC members have been designated in numerous states and are investing high-cost support in facilities and services to consumers in areas in need of a reliable alternative to wireline service. The per-line support mechanism works because it requires CETCs to invest in an area based upon sound market-based principles, not upon the carrier's desire to be "made whole." Any decision to pay CETCs based on recovery of their own costs would encourage inefficient investment. More importantly, given the longstanding (and increasing) subsidization of rural ILECs, it would do nothing to control the growth of the high-cost fund.

For similar reasons, rural ILECs should be transitioned to receiving support based on forward-looking economic cost. The current embedded-cost system provides no incentives for ILECs to reduce costs. There are remarkable examples of high dividend payouts and inefficient investment plans. A forward-looking methodology will accomplish one critical objective – eliminating the incentive for ILECs to make inefficient investments in order to garner support. RCA-ARC urges serious consideration of the interim and long-term forward-looking cost solutions proposed by other commenters representing the wireless industry.

Accordingly, RCA-ARC urges the Joint Board and the Commission to retain the invaluable per-line support mechanism for CETCs, and to select a forward-looking cost methodology for rural ILECs as well as a rational transition to such a methodology.

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Rural Cellular Association[1] ("RCA") and the Alliance of Rural CMRS Carriers[2] ("ARC") (collectively, "RCA-ARC"), by counsel and pursuant to the Commission's *Public Notice*, "Federal-State Joint Board on Universal Service Seeks Comment on Proposals to Modify the Commission's Rules Relating to High-Cost Universal Service Support," FCC 05J-1 (released August 17, 2005) ("*Public Notice*"), hereby provide the following comments.

I. INTRODUCTION

RCA-ARC members provide commercial mobile services in many rural areas throughout the U.S. They have collectively petitioned and obtained grants of eligible telecommunications carrier ("ETC") status in more than 16 states and the territories of Guam and Saipan, and as such

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[1] RCA is an association representing the interests of approximately 100 small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 150 rural and small metropolitan markets where more than 15 million people reside.

[2] ARC is a group of CMRS carriers who are licensed to serve rural areas in Alabama, Alaska, Colorado, Guam, Iowa, Kansas, Maine, Mississippi, Minnesota, Nebraska, New Hampshire, Oregon, South Dakota, Vermont, Virginia, Washington, West Virginia and Wisconsin. ARC's membership is comprised of the following carriers (or their subsidiaries): Alaska DigiTel, LLC, Cellular South Licenses, Inc., Guam Cellular and Paging, Inc., Highland Cellular, Inc., Midwest Wireless Communications, LLC, N.E. Colorado Cellular, Inc., Rural Cellular Corporation and Virginia Cellular, Inc.

are well versed in the ETC designation process and in carrying out their respective obligations as competitive ETCs ("CETCs"). RCA-ARC members are today using high-cost support to further Congress' twin goals of advancing universal service and introducing competition to rural areas. As carriers who serve almost exclusively in rural areas, RCA-ARC members are qualified to provide the Joint Board with commentary on the questions raised in the above-referenced Public Notice.

As set forth below, the FCC has to date provided appropriate incentives for rural CMRS carriers to obtain ETC status and improve this nation's critical wireless infrastructure. Specifically, the current system for allocating high-cost support in rural areas furthers Congress's goal of providing rural consumers with services comparable to those available in urban areas and it properly drives infrastructure investment by carriers that can efficiently provide the supported services, thereby reducing the overall burden on the fund in the long term. While RCA-ARC's members do not favor any particular one of the proposals attached to the *Public Notice,* they reserve the right to comment on specific components of those plans at a later date. Rather than comment on the different lines of federal-state authority detailed in the proposals, these comments will focus on the underlying goals that must be served in determining the appropriate manner of paying different classes of ETC.

II. RURAL AMERICA NEEDS IMPROVED WIRELESS SERVICE – BOTH IN TERMS OF QUANTITY AND QUALITY – NOW

As RCA-ARC members have applied for ETC status in many states, they have experienced one consistent theme: Rural America wants wireless telecommunications services that are comparable to those in urban areas. This is no small matter. Wireless communications services are critical to health and economic development in rural areas. For example, in rural western Nebraska, more than 1,700 consumers signed petitions requesting improved wireless

service in their areas.[3] When NECC applied for ETC status in Nebraska, numerous people volunteered to testify on the company's behalf that critical 911, E-911, economic development and other consumer benefits are unavailable to them as a result of poor-quality wireless networks that do not offer consumers the ability to place and receive important calls. Other members of the public appeared at a hearing held in McCook, Nebraska, attended by three commissioners, to testify that they are very unhappy that they cannot access wireless networks in the same fashion as their urban counterparts. Most stated that they would abandon their wireline service if wireless service were available where they live, work and play and if local number portability and E-911 were available.[4]

RCA-ARC members and undersigned counsel have met with dozens of state public utility commissioners, and members of the U.S. Congress, virtually all of whom describe receiving complaints from consumers about the virtual absence of wireless service in many rural areas. Despite the issuance of multiple licenses authorizing service in those areas, these complaints underscore the paucity of wireless carriers that have succeeded in providing services beyond big cities and major roads. RCA-ARC members' experience is completely contrary to suggestions by ILEC industry trade groups that CMRS providers are already providing high-quality service to rural areas without high-cost support.

[3] ARC member N E. Colorado Cellular, Inc. ("NECC") has copies of the petitions which can be supplied upon request of the Commission.

[4] We have attached as Exhibit A excerpts from the testimony submitted and testimony at the hearing, which provide the Commission with unambiguous evidence of the need for high-cost support to be distributed to wireless carriers in rural areas.

While the *Ninth CMRS Competition Report* contains data purporting to show that there is service in rural America, the issue is not whether a zip code or a wire center has some service.[5] The issue is whether rural consumers have service availability and service quality which is similar to that which is available in urban areas. More important to the Joint Board should be the fact that counties in which three or more wireless carriers provide service constitute only 62% of the nation's land area.[6] The remaining 38% of the country – as well as unserved or underserved areas within the counties in which some service is provided – is precisely where Congress intended for universal service funds to be invested to drive infrastructure investment so that consumers can receive the kinds of telecommunications services available in urban areas.

The health and safety benefits of wireless scarcely bear repetition. Even the highest-quality wireline service is no match for the versatility of wireless, as emergencies do not always happen near the kitchen phone, notably those occurring in automobiles and on farms. Rural consumers are particularly unhappy that wireless networks do not provide end-to-end coverage in rural areas where they drive. In many places in the upper Midwest and Northeast, winters are bitterly cold and an ordinary automobile breakdown can be a life or death matter.[7] Several hundred million dollars per year are now being invested across the country to construct new network facilities in rural areas, and states are overseeing that investment. States are holding

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5 *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993. Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, CC Docket No 04-111, *Ninth Report*, FCC 04-216 (rel. Sept 28, 2004) ("*Ninth CMRS Competition Report*"), ¶ 109.

6 *See id* at ¶ 49

7 *See* n.4, *supra*

carriers accountable by requiring periodic reporting of carrier investments, to ensure funds are being used properly.[8]

III. THE STATED PURPOSE OF UNIVERSAL SERVICE AS MANDATED BY CONGRESS MUST BE FAITHFULLY HONORED

When the 1996 Act was enacted, telephone penetration in the U.S. was 95% nationwide.[9] Since then, overall telephone penetration has remained flat or decreased.[10] Congress included in the 1996 Act specific provisions to permit competitive carriers to become ETCs not to connect up a few stray people, but to provide high-quality infrastructure and competition in rural areas.[11] Congress' goal, to remove implicit high-cost support so as to level the playing field for all carriers, could not have been clearer. The entire purpose of the 1996 Act was pro-competition and deregulatory.[12]

Nowhere in the 1996 Act or its legislative history did Congress state that its goal for universal service going forward was to consign any part of rural America to a single monopoly carrier, providing only one technology, subsidized by users of other more efficient or desirable technologies. Far from choosing a preferred technology, Congress directed the FCC to use universal service to provide rural consumers with access *to the same kinds of*

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[8] ARC members report that, among others, Vermont, Oregon, Mississippi, Maine, Kansas, South Dakota, Colorado, and West Virginia all require periodic reporting of CETC investments of high-cost support.

[9] Telephone Subscribership in the United States – Data Through November 1996 (rel. Jan. 1997) at p. 18, Table 3. *See* http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/subs1196.pdf.

[10] Telephone Subscribership in the United States – Data Through March 2005 (rel. May 2005) at p. 8, Table 2. *See* http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/subs0305.pdf.

[11] *See* 47 U.S.C. Sections 214, 254.

[12] "An Act to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." Telecommunications Act of 1996, Pub. L. No. 104-104, preamble, 110 Stat. 56.

telecommunications choices and at similar rates available to those in urban areas, consistent with the Act's core mission to promote competition and deregulate telecommunications.[13]

When incumbents challenged the FCC's interpretation of the 1996 Act and its implementation, the Fifth Circuit adamantly upheld the Commission:

> Petitioners' various challenges fail because they fundamentally misunderstand a primary purpose of the Communications Act--to herald and realize a new era of competition in the market for local telephone service while continuing to pursue the goal of universal service. They therefore confuse the requirement of sufficient support for universal service within a market in which telephone service providers compete for customers, which federal law mandates, with a guarantee of economic success for all providers, a guarantee that conflicts with competition.[14]

To date, the FCC and the courts have consistently upheld the fundamental purpose of the 1996 Act that Congress enacted – to remove support from ILEC rate structures, to open access to support by competing carriers, and to drive infrastructure investment to provide higher-quality competitive services to rural Americans at the earliest possible date.[15]

RCA-ARC members face exactly the same challenges as those faced by ILECs and identified by the Rural Task Force in its White Paper No. 2.[16] But rural wireless carriers are not on a level playing field with incumbent carriers, who operate under rate of return regulation and a modified embedded cost methodology for calculating support that guarantees a profitable business, while permitting many to charge artificially low rates for access to the public switched

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13 47 U.S.C. Section 254(b)(3).

14 *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 625 (5th Cir. 2000).

15 *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1966, First Report and Order*, 11 FCC Rcd 15499, 15506 (1996) ("*Local Competition Order*") ("The opening of all telecommunications markets to all providers will blur traditional industry distinctions and bring new packages of services, lower prices and increased innovation to American consumers. The world envisioned by the 1996 Act is one in which all providers will have new competitive opportunities as well as new competitive challenges.")

16 *See generally* "The Rural Difference," RTF White Paper #2 at pp. 15-30.

network. Investment industry analysis consistently values rural ILEC businesses higher than RBOCs because of favorable regulatory treatment and higher barriers to competitive entry.[17]

Some have argued that current federal policy may foster "artificial competition," that is, supporting multiple networks in areas that cannot support even one. Generally, this view is espoused by monopolists and is diametrically opposed to the Act's command to advance universal service in high-cost areas. We can find nowhere in the 1996 Act or its legislative history any expression that the new law was intended to support a single network. Far from it – the FCC has reached precisely the opposite conclusion.[18] Most rural Americans, who literally cry out for improved wireless services and competitive alternatives to their local exchange carrier, would revolt at such a notion. What is artificial is providing support to a monopoly carrier and, by regulatory fiat, locking out competitors who are ready, willing and able to deliver services that consumers in rural areas are demanding.

Restricting access to the fund by competitive carriers in order to control growth of the fund is focusing attention on the tail instead of the dog. If fund growth is a problem, then the place to begin is the Schools and Libraries program and examination why high-cost support paid to rural ILECs in real dollars continues to increase notwithstanding the fact that access lines are flat or decreasing.

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[17] For example, in a recent Legg Mason report valuing local exchange carriers, the mean enterprise valuation assigned to RBOCs is 6.4x EBITDA and $2,458 per access line, while the mean enterprise valuation assigned to independent telcos is 6.6x EBITDA and $3,438 per access line. *See* Legg Mason Telecommunications and Media Group, Weekly Trading Analysis, Incumbent Local Exchange Carriers (July 8, 2005). The report is attached to these comments as Exhibit B.

[18] *See Federal-State Joint Board on Universal Service. Report and Order*, 12 FCC Rcd 8776, 8802 (1997) ("*First Report and Order*") ("Our decisions here are intended to minimize departures from competitive neutrality, so as to facilitate a market-based process whereby each user comes to be served by the most efficient technology and carrier. We conclude that competitively neutral rules will ensure that such disparities are minimized so that no entity receives an unfair competitive advantage that may skew the marketplace or inhibit competition by limiting the available quantity of services or restricting the entry of potential service providers.")

The FCC has unequivocally ruled that a competitive carrier cannot be expected to enter a market where an incumbent has all the customers and all the support.

> A new entrant faces a substantial barrier to entry if its main competitor is receiving substantial support from the state government that is not available to the new entrant. A mechanism that makes only ILECs eligible for explicit support would effectively lower the price of ILEC-provided service relative to competitor-provided service by an amount equivalent to the amount of the support provided to ILECs that was not available to their competitors. Thus, non-ILECs would be left with two choices -- match the ILEC's price charged to the customer, even if it means serving the customer at a loss, or offer the service to the customer at a less attractive price based on the unsubsidized cost of providing such service. A mechanism that provides support to ILECs while denying funds to eligible prospective competitors thus may give customers a strong incentive to choose service from ILECs rather than competitors. Further, we believe that it is unreasonable to expect an unsupported carrier to enter a high-cost market and provide a service that its competitor already provides at a substantially supported price. In fact, such a carrier may be unable to secure financing or finalize business plans due to uncertainty surrounding its state government- imposed competitive disadvantage. Consequently, such a program may well have the effect of prohibiting such competitors from providing telecommunications service, in violation of section 253(a).[19]

All but a few states have flatly rejected the incumbents' view of universal service as a set-aside program for ILECs, with support intended solely to connect subscribers to the telephone network and subsidize existing ILEC operations. RCA-ARC members have been successful in obtaining ETC status because they have consistently advocated positions that embrace the law that Congress wrote and have only asked for treatment that is consistent with the Act.

As envisioned by Congress, RCA-ARC members have rapidly accelerated the deployment of telecommunications infrastructure in every area where they have been designated. Rural consumers are seeing improved wireless service, many more areas where 911 and E-911

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[19] *Western Wireless Corporation Petition For Preemption Of Statutes And Rules Regarding The Kansas State Universal Service Fund Pursuant To Section 253 Of The Communications Act Of 1934, Memorandum Opinion & Order*, 15 FCC Rcd 16227, 16231 (2000) (footnote omitted) ("*Kansas Preemption Order*").

services are available, economic development opportunities, and the advancement of mobile wireless technologies that have been available in urban areas since the mid-1980s.

This success has not come without a steep price, and the level competitive playing field and rural-urban parity envisioned by Congress is not yet a reality. Throughout the past seven years, incumbent carriers have expended enormous efforts to thwart RCA-ARC members from receiving grants of ETC status across America. It is not an exaggeration to state that oppositions have significantly delayed the competitive entry that Congress intended to occur, to the substantial detriment of rural consumers.

RCA-ARC urge the Joint Board to adopt proposals that uphold the law Congress wrote. CETCs are only beginning to deliver the benefits that Congress promised and this proceeding will likely determine whether rural America will continue to see rapid deployment of wireless infrastructure that is so vitally needed.

IV. THE CURRENT PER-LINE METHODOLOGY LIMITS FUND GROWTH WHILE FORCING COMPETITORS TO INVEST IN RURAL AREAS IN ORDER TO GAIN SUPPORT

On May 5, 2003, RCA-ARC submitted comments in this docket, including commentary from Don J. Wood detailing why the current per-line methodology provides appropriate market signals to all participants. Mr. Wood explained that the current rules for providing high-cost support do not create an unfair advantage for the CETC.[20] Mr. Wood explained that if a CETC's costs are higher, whether because it operates inefficiently, uses a less efficient technology for the area in question, or both, a CETC that receives support based on the incumbent's costs will not find it financially viable to enter the geographic market and invest in facilities. This is the desired result: a less efficient provider should not be encouraged to enter, nor should its entry be

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[20] *See* RCA-ARC Comments in CC Docket No. 96-45 (filed May 5, 2003) at Exhibit 1, "Effective Long-Run Management of the High-Cost Universal Service Support Mechanism."

supported. However, when a CETC's costs are equal to or lower than the incumbent's, then it is likely to enter and should be encouraged to do so. Competitive entry by a lower-cost carrier will inure to the consumer and reduce the need for high-cost support in the long run.

During the transition period during which competitive networks are being constructed, the incumbent's costs are the appropriate benchmark. Once competitive networks are constructed, the better benchmark is the lower-cost provider, which encourages efficiency and sends the correct signal to the marketplace. If a CETC's costs are lower than an incumbent's, it will force the incumbent to become more efficient. Rural ILECs are well positioned to improve efficiencies, exploit the natural advantages of a wireline network for data, video, and Internet services, and use wireless technologies to compete with newcomers.

Some have claimed that the receipt of support based on the ILEC's per-line support level is a "windfall" for CETCs. In fact, since CETCs must use all available support for the provision, maintenance and upgrading of facilities and services,[21] there can be no windfall. Any so-called excess support results in competitive networks being constructed at an accelerated pace, and state commissions throughout the country are overseeing efforts by CETCs to build infrastructure and undertake other improvements to enhance the availability and quality of telecommunications service. Moreover, since most every newcomer has a much younger network than the incumbent, there are normally very substantial construction projects that must be undertaken to construct and upgrade networks that are capable of competing with incumbents *throughout the service area*.

For example, Midwest Wireless Communications, LLC ("Midwest") and Rural Cellular Corporation ("RCC") have been designated as ETCs in areas which, taken together, cover substantially all of the rural areas in the state of Minnesota. Collectively, their annualized total

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[21] 47 U.S.C. Section 254(e); 47 C.F.R. Section 54.7

projected support amount is approximately $28 million.[22] The annualized projected high-cost support amount for ILECs serving the same area is roughly three times that, or roughly $85 million.[23] With few exceptions, this pattern is repeated throughout the country.[24] Competitive ETCs are expected to respond to all reasonable requests for service and make upgrades and expansions to their facilities and services with far less available support than ILECs with mature networks. Moreover, no matter how many ETCs are designated in these areas, fund growth is effectively capped because there is a finite number of customers and lines available to competitors.

Sound public policy would dictate that a support mechanism be based on the most efficient provider of telecommunications service. The Joint Board will best serve consumers by encouraging efficient providers to enter so that consumers can choose the service they want from the provider that best suits their needs. Although the current system has done much to provide appropriate incentives to competitive and incumbent ETCs, RCA-ARC would like to see a plan that transitions to a system where support to all carriers is based on the forward-looking costs of the most efficient provider of services.

V. PAYING EACH CARRIER ON ITS OWN COSTS WOULD DRAMATICALLY INCREASE FUND GROWTH

Today, a CETC can only get support if the potential customer revenue and support available are sufficient to permit competitive entry – that is, CETCs have the proper market entry information to determine whether to risk making the commitments necessary to become a

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22 Source: www.universalservice.org, First Quarter Appendices - 2005 at HC01.

23 *Id*

24 In Vermont, RCC, an ETC throughout the entire state, is projected to receive roughly $6.5 million in support in 2005. ILECs in Vermont serving the same area are projected to receive roughly $28 million. See, http://www.universalservice.org/overview/filings/2005/Q1/default.asp at HC01. Even though RCC's support will rise as it gets more subscribers, it will be many years before its support reaches ILEC levels.

CETC.[25] ILECs that argue for support to be paid on a CETC's costs presume that the competitor has a lower cost structure and would presumably require less support. These presumptions may be incorrect and if the wrong choice is made, the fund size is likely to expand rapidly.[26] Any cost model developed for a competitor's technology must necessarily include the cost of constructing an entire network in the ETC service area, not just the existing network. Moreover, because in almost every case the CETC has far fewer lines than an incumbent, its per-line costs are likely to be far higher. Suggestions that a CETC's support should be capped at the level of ILEC costs obviously fail competitive neutrality.

VI. THE CURRENT METHODOLOGY FOR PROVIDING SUPPORT TO ILECS IS INEFFICIENT

Some ILECs have claimed that high-cost support is reimbursement for actual costs. Yet many rural carriers do not submit cost data to NECA in order to qualify for support, but receive support pursuant to an "average schedule" methodology that requires no information on actual costs. In the FCC's recent proposal to audit more carriers, the audit criteria cover only whether the information has been accurately submitted.[27] It is RCA-ARC's understanding that audits will not examine whether ILEC investments are necessary, efficient, or in compliance with the FCC's rule that all support be used only for the "provision, upgrading and maintenance of facilities and services."[28]

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[25] Of course, where support for ILECs is disaggregated, support is more accurately targeted to high-cost areas.

[26] It would be possible for a CETC to be the most efficient provider in a given area but also have a higher cost structure than the ILEC due to a need to improve facilities and expand system coverage rapidly.

[27] *See Comprehensive Review of Universal Service Fund Management, Administration, and Oversight,* WC Docket No. 05-195, *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking* at ¶¶ 44-52 (rel June 14, 2005).

[28] 47 C.F.R. Section 54.7

In fact nobody knows the actual costs of operation of most rural ILECs and nobody knows whether they are being over- or under-compensated. The current modified embedded cost system does not produce cost data open to public analysis.

For example, the Helix Telephone Company in Oregon serves approximately 500 access lines in two non-contiguous wire centers. Helix applied to the Oregon Public Utility Commission ("OPUC") for a waiver of local number portability ("LNP") requirements alleging that it would be unduly burdensome to replace both of its switches, each at a cost of over $250,000.[29] With the availability of soft switches, switch sharing capabilities, and other possible solutions, it is inconceivable that any carrier would invest in two switches amounting to $500,000 to upgrade 500 access lines *if it were in a competitive marketplace*. Another network design almost certainly could provide a more efficient means to offer LNP, but Helix has no incentive to facilitate a choice of service providers for consumers or to invest efficiently because the current system ensures that all of its investments will result in a profitable business.

In Colorado, PC Telecom claimed that it could not provide LNP because it has not upgraded its equipment in many years. In the course of the proceeding, it was discovered that its subscribers do not yet have "CLASS features," such as caller ID and call waiting, some 20 years after they were introduced in this country. From ARC member N.E. Colorado Cellular's ("NECC") perspective, embedded costs have only permitted PC Telecom to collect support with no obligation to improve its network. In the meantime, it vigorously opposed NECC's ETC petition and asked for an eighteen month extension of the LNP requirement.

Across the country dozens of extensions of LNP deadlines have been requested because the ILEC networks require substantial investment to bring them up to date. The obvious question

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[29] Helix Telephone Co., Petition for Suspension of Wireline to Wireless Number Portability Obligations, Docket No. UM 1125 at p. 2 (Or. PUC, Jan 27, 2004) ("Helix Order").

for regulators should be, "Where is the consumer's money going?" If support is not yielding modern networks, how are the funds spent by companies that have not upgraded their networks? With over $3 billion of consumer contributions going out to rural ILECs each year, consumers deserve accountability and RCA-ARC members support accountability for how high-cost support is invested.

ILECs consistently claim that the modified embedded cost methodology provides appropriate incentives for carriers to invest in their networks and a move to forward-looking costs will dampen such incentives. Yet they have provided almost no evidentiary data to support these claims. Examples of high-dividend payouts, inefficient investment plans, and poor facilities, are not difficult to find.[30] Surely there are areas where rural consumers have access to high-quality wireline facilities. However, universal service support was intended to ensure that all areas have high-quality service and that consumers have a choice in service providers. Wireless carriers seek funds to extend service and compete for consumers who have few or no choices in wireless services. Congress understood full well that competition for support and consumers is the only practical way to encourage efficiencies and innovation from all carriers, to the benefit of rural consumers.

VII. IN ORDER TO LIMIT FUND GROWTH, THE COMMISSION MUST MOVE RURAL CARRIERS TO FORWARD-LOOKING COSTS

Of all the myths perpetuated by rural ILEC lobbyists, perhaps the most absurd is the contention that CETCs are the "main" cause of growth in the fund. If total support to incumbent and CETCs in rural areas is claimed to be excessive, then attention must be focused on the

[30] Citizens-Frontier took in over $100 million in high-cost support in 2004, but paid out roughly $300 million in dividends to its shareholders.

companies on whose costs such support is based; indeed, high-cost funding to rural ILECs was ripe for review long before CETCs appeared on the scene.

In 1996, the Joint Board recommended basing support for all carriers on a forward-looking cost system. The FCC adopted the Joint Board's recommendation in 1997. A review of the *First Report and Order* reveals that the Commission carefully considered and unequivocally adopted forward-looking costs as the preferred method for preserving universal service:

> We agree with the Joint Board and many commenters that, in the long run, forward-looking economic cost best approximates the costs that would be incurred by an efficient carrier in the market. We concur with the Joint Board's finding that the use of forward-looking economic costs as the basis for determining support will send the correct signals for entry, investment, and innovation.
>
> We agree with the Joint Board that the use of forward-looking economic cost will lead to support mechanisms that will ensure that universal service support corresponds to the cost of providing the supported services, and thus, will preserve and advance universal service and encourage efficiency because support levels will be based on the costs of an efficient carrier.
>
> We also agree with the Joint Board that a forward-looking economic cost methodology is the best means for determining the level of universal service support. We find that a forward-looking economic cost methodology creates the incentive for carriers to operate efficiently and does not give carriers any incentive to inflate their costs or to refrain from efficient cost-cutting.
>
> We note that California, Ohio, and Pennsylvania are using forward-looking economic cost studies for determining support levels in their intrastate universal service programs.
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> As the Joint Board recognized, to the extent that it differs from forward-looking economic cost, embedded cost provide the wrong signals to potential entrants and existing carriers. The use of embedded cost would discourage prudent investment planning because carriers could receive support for inefficient as well as efficient investments. The Joint Board explained that when "embedded costs are above forward-looking costs, support of embedded costs would direct carriers to make inefficient investments that may not be financially viable when there is competitive entry."
>
> We also agree with CPI that the use of embedded cost to calculate universal service support would lead to subsidization of inefficient carriers at the expense of

efficient carriers and could create disincentives for carriers to operate efficiently.[31]

In the 2001 *RTF Order*, the FCC recognized the difficulties the RTF had in developing a forward-looking cost model for rural carriers, but also noted that implementing a model could be done:

> As some commenters point out, the Rural Task Force's analysis of the forward-looking mechanism was based on the results of running the existing high-cost universal service model for rural companies using non-rural inputs. Because it found significant differences in comparing these results with actual company data, the Rural Task Force found that the model was not an appropriate tool for determining forward-looking costs of rural carriers. If inputs based on rural carrier data had been used, however, many of these differences could have been eliminated. Other differences identified by the Rural Task Force with respect to individual companies are generally the discrepancies one would expect when inputs designed for non-rural companies are used for an analysis of rural costs.
>
> The Commission has long recognized that the mechanism used to determine forward-looking cost for rural carriers may differ from that used for non-rural carriers. For instance, one could design a forward-looking mechanism for rural carriers that uses different benchmarks and averaging conventions.[32]

In the past three years, the Commission has not actively investigated how to implement a forward-looking cost model that contains rural inputs. No record evidence has been introduced that it cannot be done. There is every reason to believe a forward-looking cost model will be just as accurate, if not more so, than the current modified embedded cost model which permits the vast majority of average schedule carriers to submit no cost data on which support can be properly based. There are undoubtedly substantial inaccuracies and inefficiencies in the current system. Some have postulated that it would be expensive to reform the models developed in the RTF process. It is highly unlikely that the cost of making the forward-looking cost model work

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31 12 FCC Rcd at 8899-8901 (footnotes omitted).

32 *Federal-State Joint Board on Universal Service, Fourteenth Report and Order, Twenty-second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244, 11312-11313 (2001) ("*RTF Order*") (footnotes omitted).

properly could be more than a small fraction of the funds being spent today on the modified embedded cost methodology.

A forward-looking methodology will accomplish one critical objective – eliminating the opportunity for ILECs to make inefficient investments for which the system pays them support. It is critical to note that consumers would be well served because today only CETCs have the proper incentive to invest efficiently. The per-line support mechanism requires CETCs to invest in an area based upon sound market-based principles. If a request for service cannot be accommodated because an investment will be inefficient, then the CETC commits to serve that customer through resale, and as such, forfeits support for that customer.

VIII. CONCLUSION

RCA-ARC urges the Joint Board to manage growth of the fund while continuing a competitively neutral course that Congress set in 1996 and the FCC has faithfully carried out for nine years. Forward-looking costs would reduce support to all carriers in the long run while encouraging efficient investment. In the short run, proper disaggregation of support would reduce support to CETCs but not to ILECs. Forcing all carriers to compete for customers and support, with support levels meaningfully capped and made fully portable, will restrain fund growth while ensuring that consumers come first.

Today, the number of wireless access lines has surpassed wireline.[33] Every year, the gap will widen further because consumers prefer wireless for their voice communications needs ***in every area where wireless carriers have high-quality networks in areas where people live, work and play.*** Wireless also has the capability to deliver many services that wireline cannot, such as mobile data, mobile calendar, digital wallet, and many more. As the wireline voice business

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[33] *See* "Local Telephone Competition: Status as of December 31, 2004," Industry Analysis and Technology Division, Wireline Competition Bureau (July 2005) at pp. 1-2 and tables 1 and 13 (approximately 181 million mobile wireless subscribers versus approximately 177.9 million switched-access lines).

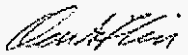
recedes, there needs to be a greater focus on how to advance policies that encourage wireless carriers to continue to use high-cost funds to develop infrastructure in rural areas. The Commission, not 50 individual states, is the best place to assure that the federal USF is distributed according to a process that is competitively neutral and provides rural consumers with access to the same kinds of telecommunications choices and at similar rates available to those in urban areas.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

and

THE ALLIANCE OF RURAL CMRS CARRIERS



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September 30, 2005

CERTIFICATE OF SERVICE

I, Linda Adam, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this 30th day of September, 2005, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing Comments of Rural Cellular Association and the Alliance of Rural CMRS Carriers filed today to the following:

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